

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD DEWAYNE NELSON,

Plaintiff,

v.

DINCA EMMANLELLE, *et al.*,

Defendants.

CASE NO. 3:21-cv-1457-RJB

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DENYING APPLICATION TO  
PROCEED *IN FORMA PAUPERIS*

The Court, having reviewed Plaintiff's application to proceed *in forma pauperis* (IFP), the Report and Recommendation of the Honorable Michelle L. Peterson, United States Magistrate Judge (Dkt. 5), Plaintiff's Objections (Dkt. 6), and the remaining record, finds that the Report and Recommendation should be adopted.

The Report and Recommendation recommends denying Plaintiff IFP status because he declared that he has a current statement balance in his inmate account of \$1780.62, which is sufficient to pay the \$402.00 filing fee required in a civil rights action. Plaintiff filed objections to the Report and Recommendation, but the objections go to the merits of his claim; they do not relate to his ability to pay the filing fee. *See* Dkt. 6. The Court agrees with the recommendation to deny IFP status.

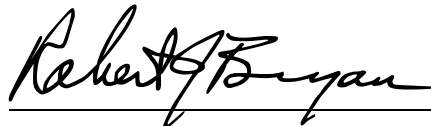
1 In addition to recommending denial of IFP status, the Report and Recommendation  
2 advised Plaintiff that, should he elect to pay the filing fee, elements of his complaint are  
3 presently defective – notably that he seeks to bring civil rights claims against his Prosecutor and  
4 Judge but prosecutors and judges are absolutely immune from civil rights claims for acts done  
5 within the scope of their official duties. Dkt. 5; *citing Briscoe v. LaHue*, 460 U.S. 325, 334–36  
6 (1983); *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). In his objections, Plaintiff references  
7 habeas corpus. Plaintiff should be advised of the warning in the Report and Recommendation  
8 that he does not petition for habeas corpus relief in his complaint.

9 The hereby finds and ORDERS:

- 10 (1) The Report and Recommendation is approved and adopted;
- 11 (2) Plaintiff's application to proceed *in forma pauperis* (Dkt. 4) is denied;
- 12 (3) The Clerk shall file the complaint only upon receipt of the filing fee. If no filing fee  
13 is paid within thirty days of the date of this Order, the Clerk is directed to close the  
14 file;
- 15 (4) The Clerk is directed to send copies of this Order to Plaintiff and to the Honorable  
16 Michelle L. Peterson.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
18 to Plaintiff appearing pro se at said party's last known address.

19 Dated this 21<sup>st</sup> day of December, 2021.

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22 ROBERT J. BRYAN  
23 United States District Judge  
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